In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 517

ALLEN WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 1966 (Pet. App. C). On August 2, 1966, Mr. Justice Brennan extended the time for filing a

petition for a writ of certiorari to and including September 3, 1966, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction for violation of the Mann Act.

2. Whether the court erred in its charge to the jury.

STATEMENT

After a trial by jury in the United States District Court for the Northern District of Texas petitioner was convicted on a one-count indictment charging unlawful transportation in interstate commerce of two women so that they might engage in prostitution, in violation of 18 U.S.C. 2421 (R. 1, 142). Petitioner was sentenced to imprisonment for three years (R. 143). On appeal, the conviction was affirmed (R. 144, 157; Pet. App. C).

Evidence adduced at the trial showed that petitioner, also known as Junior Barnes, met Rosie Nell Walker, a 14-year old girl, shortly after Easter 1964 at Hobbs, New Mexico (R. 21-22, 96-97, 117). They traveled from Hobbs to Clovis, New Mexico, and returned to Hobbs the following day (R. 22, 101-102). During the trip to Clovis, petitioner told Rosie Walker that she was "his woman" (R. 23). At Hobbs petitioner and Rosie Walker met Paula Evans, petitioner's 32-year-old common-law wife (R. 24, 98-99, 117).

Rosie Walker testified that petitioner and Paula Evans took her to a Hobbs motel (R. 25). Rosie Walker's mother came to the motel and, with the assistance of Captain Palmer of the Hobbs Police Department, had her daughter brought home (R. 26-29). A few days later Rosie Walker was abducted from her home. Someone put a sack over her head, said, "We are going to get a lot of money now", and drove her to Clovis (R. 30-32). Petitioner was in the room in Clovis when the sack was removed from Rosie Walker's head (R. 32).

Petitioner, in the presence of Paula Evans, explained to Rosie how to "call in tricks" (engage in prostitution) and to "pull creeps" on them (crawl into a room and steal money from the wallet of a man being kept occupied by another prostitute) (R. 33-34). Rosie gave petitioner the money from her prostitution dates at Clovis since he said "all of his whores gave him his money" (R. 34-35). Paula Evans also filled prostitution dates and gave money to petitioner (R. 37-38).

About four weeks after Easter 1964 petitioner, explaining that his automobile had broken down, obtained a ride in the car of one Samuel Scott from Clovis to Amarillo, Texas (R. 6-8, 64, 104). The following day petitioner told Scott to pick up some things at a house in Clovis where Paula Evans and Rosie Walker were waiting (R. 9-10, 20). Scott said he did not know the two women were coming along until he and petitioner started putting things into the car (R. 15). Scott and his common-law wife then drove petitioner, Paula Evans, and Rosie

Walker to Amarillo (the interstate transportation charged in the indictment) (R. 11, 35-36). Rosie Walker said that the trip was made because "Junior (petitioner) wanted to leave Clovis" (R. 36).

Petitioner rented rooms in an Amarillo motel for Rosie Walker, Paula Evans and himself (R. 39). Petitioner said that he was going to get Rosie a job so she would have a "front" (R. 39). Rosie worked as a waitress for a few days, but continued to fill prostitution dates (at one of which petitioner was present), and gave the proceeds of these dates to petitioner (R. 40-41, 86-87). While in Amarillo Rosie saw Paula giving money to petitioner (R. 40).

Subsequently petitioner took Rosie Walker to Lubbock, Texas where she filled other prostitution dates and gave the proceeds to petitioner (R. 42). On June 10, 1964, a police officer, acting upon information from Rosie's mother, went to a Lubbock motel, recognized Rosie after petitioner denied knowing a Rosie Walker, and took her to the police station (R. 66-68).

Petitioner testified on his own behalf that he told Rosie he did not want to be bothered with her and that she should go home to her mother, but she nevertheless entered Scott's car to make the trip to Amarillo (R. 105). He denied that he had caused either Rosie or Paula Evans to engage in prostitution (R. 110). Petitioner admitted making false statements to an F.B.I. agent that the two women had traveled to Amarillo by bus some days after he had made the trip (R. 133-135).

ARGUMENT

1. The evidence detailed in our Statement, *supra*, refutes petitioner's contention that the proof was insufficient to show that he was responsible for the transportation of the women. The evidence disclosed that petitioner was the moving cause behind the transportation. He made the arrangements to move the two women from Clovis, and the jury could infer that it was his purpose to change the base of his prostitution operations from Clovis to Amarillo.

The evidence clearly demonstrated the immoral purpose of the trip. Just prior to being moved from Clovis, Rosie Walker and Paula Evans had engaged regularly in acts of prostitution for petitioner's pecuniary benefit. That course of conduct continued unabated immediately after the journey to Amarillo, and the jury could conclude that petitioner contemplated such a continuation.

2. The court did not err in its charge to the jury. As a whole (*Boyd* v. *United States*, 271 U.S. 104, 107), the charge plainly permitted the jury to find petitioner guilty only if the transportation was for purposes of prostitution. The charge referred to the statute as applying to whoever knowingly transports in interstate commerce any woman for the purpose of prostitution (R. 139). The court said that a guilty verdict was proper if the transportation of the two women was "* * * for an immoral * * * purpose and in order that they might engage in the practice of prostitution * * *" (R. 140). The

charge further admonished the jury to decide if the petitioner "* * * is responsible for the trip as made for this unlawful purpose, that is, the trip in interstate commerce for the purpose of prostitution * * *" (R. 142).

Nor did the court err in refusing to give petitioner's requested instruction number 1, set out in the margin.[1] Petitioner's reliance upon *Edgington* v. *United States*, 164 U.S. 361, is misplaced. In *Edgington* this Court held that an accused was entitled, on request, to an instruction that evidence of his good character could be considered by the jury together with all of the evidence in determining whether there was a reasonable doubt of guilt, and that it was improper to instruct the jury to consider such evidence only in cases of doubt. The present instruction dealt with reputation or character evidence relating not to the accused, but to a prosecuting witness. Evidence of an accused's good character may be so persuasive that it alone may create a reasonable doubt as to his guilt. But the same is not true of evidence of the bad reputation of a prosecuting witness, which is only one circumstance bearing upon that witness's credibility. In relation

[1] "In determining whether the government has proved its case beyond a reasonable doubt, you may consider the testimony offered by the defendant relative to the reputation of the witness Rosie Nell Walker for truth and veracity. It is substantive evidence and must be considered together with all of the other evidence in the case and that testimony alone, namely the reputation testimony, may in and of itself create the doubt in your minds sufficient upon which you should find the defendant 'Not Guilty'" (R. 138-139).

to witness Walker's testimony petitioner had the benefit of the court's general instruction that the jurors were the judges of the credibility of the witnesses (R. 142). It was within the court's discretion, however, to reject an instruction which would highlight one of many factors bearing upon the witness's credibility and appear to give the jury the impression that that factor was more important than the demeanor of the witness or the other circumstances bearing upon the credibility of her story.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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